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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 ERIC BURRELL M.,<sup>1</sup> ) Case No. EDCV 18-0784-JPR  
12 )  
13 Plaintiff, )  
14 ) MEMORANDUM DECISION AND ORDER  
15 v. ) AFFIRMING COMMISSIONER  
16 )  
17 NANCY A. BERRYHILL, Acting )  
18 Commissioner of Social )  
19 Security, )  
20 )  
21 Defendant. )  
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18 **I. PROCEEDINGS**

19 Plaintiff seeks review of the Commissioner's final decision  
20 denying his application for Social Security disability insurance  
21 benefits ("DIB"). The parties consented to the jurisdiction of  
22 the undersigned under 28 U.S.C. § 636(c). The matter is before  
23 the Court on the parties' Joint Stipulation, filed April 8, 2019,  
24 which the Court has taken under submission without oral argument.  
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26  
27 <sup>1</sup> Plaintiff's name is partially redacted in compliance with  
28 Federal Rule of Civil Procedure 5.2(c)(2)(B) and the  
recommendation of the Committee on Court Administration and Case  
Management of the Judicial Conference of the United States.

1 For the reasons stated below, the Commissioner's decision is  
2 affirmed.

## 3 **II. BACKGROUND**

4 Plaintiff was born in 1969. (Administrative Record ("AR")  
5 63.) He completed college (see AR 38, 183)<sup>2</sup> and last worked as a  
6 special warfare combatant for the U.S. Navy, a position he held  
7 for 25 years (AR 184).

8 On October 15, 2015, Plaintiff applied for DIB, alleging  
9 that he had been unable to work since March 31, 2012, because of  
10 posttraumatic stress disorder, "sleep apnea," "degenerative disc  
11 disease," "patellar subluxation both knees," "ulnar neuropathy  
12 left hand," "medial and ulnar neuropathy r[igh]t hand,"  
13 "arthritis with superior glenoid<sup>3</sup> left shoulder," "superior  
14 glenoid r[igh]t shoulder," "tend[i]nitis left elbow,"  
15 "patellofemoral syndrome r[igh]t knee," "status post ankle  
16 fracture both ankles," "tinnitus," "gastroesophageal reflux  
17 disease," "status post healed fifth metacarpal neck fracture,"  
18 "right great toe arthritis," "r[igh]t ear hearing loss," "Crohn's  
19 disease," and "back pain due to broken back in 1993." (AR 49-50;  
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21 <sup>2</sup> Plaintiff filled out a report stating that he had  
22 completed "4 or more years of college" as of June 2015 (see AR  
23 183), and his attorney noted that he has a bachelor's degree (AR  
24 270). But he also stated at the April 2017 hearing that  
25 Plaintiff was attending the University of Phoenix full-time (see  
26 AR 38), apparently for some kind of advanced degree. In any  
27 case, the ALJ's decision considered Plaintiff to have completed  
28 only high school. (See AR 27.)

<sup>3</sup> The glenoid is the socket part of the shoulder joint. See  
Shoulder Joint Tears, WebMD, <https://www.webmd.com/fitness-exercise/features/shoulder-joint-tears#1> (last visited  
June 5, 2019).

1 see also AR 163-69.) After his application was denied initially  
2 (AR 61, 63) and on reconsideration (AR 77, 78), he requested a  
3 hearing before an administrative law judge (AR 93-94). A hearing  
4 was held on April 4, 2017, at which a vocational expert  
5 testified. (AR 33-48.)

6 Plaintiff did not show up for the hearing. His attorney  
7 said that a member of his office has just spoken to him, and he  
8 "forgot that the hearing was today." (AR 35.) The attorney  
9 thought that "we woke him up," presumably shortly before the  
10 start of the 11:17 a.m. hearing. (AR 39; see also AR 35.) The  
11 ALJ noted that that wasn't good cause for failing to appear but  
12 sent "an order to show cause" to Plaintiff in case "there [wa]s  
13 some other reason." (AR 36; see also AR 146.) Plaintiff  
14 responded to the order, claiming that he had been there but was  
15 told "[his] attorney was already in the hearing" and that he  
16 should "leave." (AR 149.) The ALJ determined that "[t]here is  
17 no evidence to support that [he] appeared at the hearing office  
18 on the date of the hearing," noting that "he never signed in as  
19 per office policy" and that no attempt had been made to notify  
20 her "through instant messaging" that Plaintiff was there, which  
21 is office policy "even if the claimant arrives late and the  
22 hearing has begun." (AR 16-17.) Thus, she found that his  
23 "failure to appear . . . [was] without good cause." (AR 17.)

24 In a written decision issued September 29, 2017, the ALJ  
25 found that Plaintiff had not been disabled since the alleged  
26 onset date. (See AR 28; see generally 16-28.) Plaintiff  
27 requested review from the Appeals Council (AR 150), which denied  
28 it on February 14, 2018 (AR 1-3). This action followed.

### 1    **III. STANDARD OF REVIEW**

2            Under 42 U.S.C. § 405(g), a district court may review the  
3 Commissioner's decision to deny benefits. The ALJ's findings and  
4 decision should be upheld if they are free of legal error and  
5 supported by substantial evidence based on the record as a whole.  
6 See Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v.  
7 Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence  
8 means such evidence as a reasonable person might accept as  
9 adequate to support a conclusion. Richardson, 402 U.S. at 401;  
10 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It  
11 is more than a scintilla but less than a preponderance.  
12 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.  
13 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). "[W]hatever the  
14 meaning of 'substantial' in other contexts, the threshold for  
15 such evidentiary sufficiency is not high." Biestek v. Berryhill,  
16 139 S. Ct. 1148, 1153 (2019). To determine whether substantial  
17 evidence supports a finding, the reviewing court "must review the  
18 administrative record as a whole, weighing both the evidence that  
19 supports and the evidence that detracts from the Commissioner's  
20 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.  
21 1998). "If the evidence can reasonably support either affirming  
22 or reversing," the reviewing court "may not substitute its  
23 judgment" for the Commissioner's. Id. at 720-21.

### 24    **IV. THE EVALUATION OF DISABILITY**

25            People are "disabled" for purposes of receiving Social  
26 Security benefits if they are unable to engage in any substantial  
27 gainful activity owing to a physical or mental impairment that is  
28 expected to result in death or has lasted, or is expected to

1 last, for a continuous period of at least 12 months. 42 U.S.C.  
2 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.  
3 1992).

4 A. The Five-Step Evaluation Process

5 The ALJ follows a five-step sequential evaluation process to  
6 assess whether a claimant is disabled. 20 C.F.R.

7 § 404.1520(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th  
8 Cir. 1995) (as amended Apr. 9, 1996). In the first step, the  
9 Commissioner must determine whether the claimant is currently  
10 engaged in substantial gainful activity; if so, the claimant is  
11 not disabled and the claim must be denied. § 404.1520(a)(4)(i).

12 If the claimant is not engaged in substantial gainful  
13 activity, the second step requires the Commissioner to determine  
14 whether the claimant has a "severe" impairment or combination of  
15 impairments significantly limiting his ability to do basic work  
16 activities; if not, the claimant is not disabled and his claim  
17 must be denied. § 404.1520(a)(4)(ii).

18 If the claimant has a "severe" impairment or combination of  
19 impairments, the third step requires the Commissioner to  
20 determine whether the impairment or combination of impairments  
21 meets or equals an impairment in the Listing of Impairments set  
22 forth at 20 C.F.R. part 404, subpart P, appendix 1; if so,  
23 disability is conclusively presumed. § 404.1520(a)(4)(iii).

24 If the claimant's impairment or combination of impairments  
25 does not meet or equal an impairment in the Listing, the fourth  
26 step requires the Commissioner to determine whether the claimant  
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1 has sufficient residual functional capacity ("RFC")<sup>4</sup> to perform  
2 his past work; if so, he is not disabled and the claim must be  
3 denied. § 404.1520(a)(4)(iv). The claimant has the burden of  
4 proving he is unable to perform past relevant work. Drouin, 966  
5 F.2d at 1257. If the claimant meets that burden, a prima facie  
6 case of disability is established. Id.

7 If that happens or if the claimant has no past relevant  
8 work, the Commissioner then bears the burden of establishing that  
9 the claimant is not disabled because he can perform other  
10 substantial gainful work available in the national economy.  
11 § 404.1520(a)(4)(v); Drouin, 966 F.2d at 1257. That  
12 determination comprises the fifth and final step in the  
13 sequential analysis. § 404.1520(a)(4)(v); Lester, 81 F.3d at 828  
14 n.5; Drouin, 966 F.2d at 1257.

15 B. The ALJ's Application of the Five-Step Process

16 At step one, the ALJ found that Plaintiff met the insured  
17 status requirements through December 31, 2017, and had not  
18 engaged in substantial gainful activity since March 31, 2012, the  
19 alleged onset date. (AR 19.) At step two, she determined that  
20 he had severe impairments of PTSD, depressive disorder, alcohol  
21 abuse, degenerative disc disease of the lumbar spine, and "sleep  
22 apnea with CPAP." (Id.)

23 At step three, she found that Plaintiff's impairments did  
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25 <sup>4</sup> RFC is what a claimant can do despite existing exertional  
26 and nonexertional limitations. § 404.1545; see also Cooper v.  
27 Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). The  
28 Commissioner assesses the claimant's RFC between steps three and  
four. Laborin v. Berryhill, 867 F.3d 1151, 1153 (9th Cir. 2017)  
(citing § 416.920(a)(4)).

1 not meet or equal a listing. (AR 19-21.) At step four, she  
2 concluded that he had the RFC to perform modified light work,  
3 limiting him to

4 lifting and/or carrying 20 pounds occasionally and 10  
5 pounds frequently; standing and/or walking 6 hours in an  
6 8-hour workday and sitting 6 hours in an 8-hour workday  
7 with normal breaks; never climb ladders, ropes and  
8 scaffolds; occasionally climb ramps and stairs, balance,  
9 stoop, kneel, crouch and crawl; occasional exposure to  
10 excessive vibration such as construction vibration; no  
11 use of moving hazardous machinery such as construction  
12 machinery or in manufacturing with large moving parts; no  
13 exposure to unprotected heights; can perform unskilled  
14 work at all reasoning levels appropriate for unskilled  
15 work; occasional superficial interaction with the public;  
16 and occasional interaction with co-workers.

17 (AR 21.) Based on the VE's testimony, the ALJ concluded that  
18 Plaintiff could not do his past relevant work. (AR 26.)

19 At step five, she found that given Plaintiff's age,  
20 education, work experience, and RFC, he could perform at least  
21 three representative jobs in the national economy: "housekeeping,  
22 cleaner, DOT 323.687-014," 1991 WL 672783 (Jan. 1, 2016);  
23 "[b]attery inspector, DOT 727.687-066," 1991 WL 679675 (Jan. 1,  
24 2016); and "[g]arment folder, DOT 789.687-066," 1991 WL 681266  
25 (Jan. 1, 2016). (AR 27.) Accordingly, she found him not  
26 disabled. (AR 28.)

1 **V. DISCUSSION<sup>5</sup>**

2 Plaintiff argues that the ALJ failed to provide "specific  
3 and legitimate reasons to reject the mental limitations assessed  
4 by the psychological consultative examiner" or "clear and  
5 convincing reasons to reject [Plaintiff's] subjective symptoms."  
6 (J. Stip. at 4; see also generally id. at 5-8, 12-17, 22-23.)  
7 For the reasons discussed below, remand is not warranted on  
8 either basis.

9 A. The ALJ Properly Assessed the Consulting Psychologist's  
10 Opinion

11 Plaintiff argues that the ALJ improperly gave "some weight  
12 but not full weight" to psychologist J. Zhang's opinion. (Id. at  
13 6.) As explained below, the ALJ appropriately found that Dr.  
14 Zhang's opinion merited only "some weight." (See AR 26.)

15 1. Applicable law

16 Three types of physicians may offer opinions in Social  
17 Security cases: those who directly treated the plaintiff, those  
18 who examined but did not treat the plaintiff, and those who did  
19 neither. See Lester, 81 F.3d at 830. A treating physician's  
20 opinion is generally entitled to more weight than an examining  
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22 <sup>5</sup> In Lucia v. SEC, 138 S. Ct. 2044, 2055 (2018), the Supreme  
23 Court held that ALJs of the Securities and Exchange Commission  
24 are "Officers of the United States" and thus subject to the  
25 Appointments Clause. To the extent Lucia applies to Social  
26 Security ALJs, Plaintiff has forfeited the issue by failing to  
27 raise it during his administrative proceedings. (See AR 33-48,  
28 150); Meanel v. Apfel, 172 F.3d 1111, 1115 (9th Cir. 1999) (as  
amended) (plaintiff forfeits issues not raised before ALJ or  
Appeals Council); see also generally Kabani & Co. v. SEC, 733 F.  
App'x 918, 919 (9th Cir. 2018) (rejecting Lucia challenge because  
plaintiff did not raise it during administrative proceedings),  
cert. denied, 139 S. Ct. 2013 (2019).



1 physician's, and an examining physician's opinion is generally  
2 entitled to more weight than a nonexamining physician's. Id.;  
3 see § 404.1527(c)(1). This is so because treating physicians are  
4 employed to cure and have a greater opportunity to know and  
5 observe the claimant. Smolen v. Chater, 80 F.3d 1273, 1285 (9th  
6 Cir. 1996). But "the findings of a nontreating, nonexamining  
7 physician can amount to substantial evidence, so long as other  
8 evidence in the record supports those findings." Saelee v.  
9 Chater, 94 F.3d 520, 522 (9th Cir. 1996) (per curiam) (as  
10 amended).

11 The ALJ may disregard a physician's opinion regardless of  
12 whether it is contradicted. Magallanes v. Bowen, 881 F.2d 747,  
13 751 (9th Cir. 1989); see also Carmickle v. Comm'r, Soc. Sec.  
14 Admin., 533 F.3d 1155, 1164 (9th Cir. 2008). When a doctor's  
15 opinion is not contradicted by other medical-opinion evidence,  
16 however, it may be rejected only for a "clear and convincing"  
17 reason. Magallanes, 881 F.2d at 751; Carmickle, 533 F.3d at 1164  
18 (citing Lester, 81 F.3d at 830-31). When it is contradicted, the  
19 ALJ need provide only a "specific and legitimate" reason for  
20 discounting it. Carmickle, 533 F.3d at 1164 (citing Lester, 81  
21 F.3d at 830-31). The weight given a doctor's opinion, moreover,  
22 depends on whether it is consistent with the record and  
23 accompanied by adequate explanation, among other things. See  
24 § 404.1527(c); see also Orn v. Astrue, 495 F.3d 625, 631 (9th  
25 Cir. 2007) (factors in assessing physician's opinion include  
26 length of treatment relationship, frequency of examination, and  
27 nature and extent of treatment relationship).

28 An ALJ need not recite "magic words" to reject a physician's

1 opinion or a portion of it; the court may draw "specific and  
2 legitimate inferences" from the ALJ's opinion. Magallanes, 881  
3 F.2d at 755. The Court must consider the ALJ's decision in the  
4 context of "the entire record as a whole," and if the "evidence  
5 is susceptible to more than one rational interpretation, the  
6 ALJ's decision should be upheld." Ryan v. Comm'r of Soc. Sec.,  
7 528 F.3d 1194, 1198 (9th Cir. 2008) (citation omitted).

8           2. Relevant background

9               a. *Plaintiff's mental-health treatment records*

10           Plaintiff was apparently first prescribed Cymbalta<sup>6</sup> on June  
11 26, 2013, likely by osteopathic doctor Bjorn Nordstrom. (See,  
12 e.g., AR 332, 329.)<sup>7</sup>

13           On August 24, 2013, Plaintiff met at a veterans-affairs  
14 clinic with psychologist Jeffrey Matloff, who reviewed him for  
15 PTSD. (See AR 363-71.) Plaintiff reported PTSD "stemming from  
16 an attempted carjacking in 1991" and said that it was "triggered  
17 by interactions around court-related issues and legal  
18 authorities" as well as "certain media events." (AR 363.) He  
19 had trouble sleeping and felt "hyperalert." (Id.) He also

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21           <sup>6</sup> Cymbalta treats depression and anxiety. See Cymbalta,  
22 WebMD, [https://www.webmd.com/drugs/2/drug-91491/cymbalta-oral/](https://www.webmd.com/drugs/2/drug-91491/cymbalta-oral/details)  
23 details (last visited June 5, 2019). It can also help relieve  
24 nerve and back pain, among other things. See id. In this case,  
25 it was apparently prescribed for depression. (See, e.g., AR 306,  
26 367.)

27           <sup>7</sup> The record lacks any indication that Plaintiff ever saw a  
28 psychiatrist for treatment. (See, e.g., AR 473 (Plaintiff  
reporting in Nov. 2014 that his primary-care physician prescribed  
his mental-health-related medications).) And despite the alleged  
onset of disability on March 31, 2012, for reasons including  
PTSD, nothing in the record from that time until late 2013  
relates to mental health.

1 suffered depressive episodes, "which [could] last . . . from a  
2 couple weeks to several months," and alcohol abuse. (AR 364.)  
3 "In 2008, he began treatment with [C]oncerta[,]<sup>8</sup> which . . .  
4 effectively managed his symptoms" of attention-deficit disorder.  
5 (Id.) He had tried a number of other medications in the past,  
6 "which were not terribly effective." (AR 368.) He was going to  
7 "weekly psychotherapy . . . for the past 3 months" and "recently  
8 started marital counseling." (Id.)<sup>9</sup>

9 Dr. Matloff found that although Plaintiff had  
10 "[o]ccupational and social impairment with occasional decrease in  
11 work efficiency and intermittent periods of inability to perform  
12 occupational tasks," he was "generally functioning  
13 satisfactorily, with normal routine behavior, self-care and  
14 conversation." (AR 366.) His parents lived "in the same  
15 neighborhood" as him, and he "trie[d] to help them doing chores  
16 and repairs . . . on a daily basis." (AR 367.) He said he had  
17 been "a little more reclusive in the past 12 months" but enjoyed  
18 "cooking and gardening and spending time with his son and  
19 daughter." (Id.) He was in his "junior year" at the University  
20 of Phoenix, where he "maintained a 3.4 GPA." (Id.) Overall, Dr.  
21 Matloff felt that Plaintiff's "PTSD symptoms ha[d] worsened a bit  
22 since his last compensation and pension exam in 2012," but his  
23 "prognosis for improvement [was] fair to good with further  
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25 <sup>8</sup> Concerta treats attention-deficit/hyperactivity disorder.  
26 See Concerta, WebMD, [https://www.webmd.com/drugs/2/drug-19857/](https://www.webmd.com/drugs/2/drug-19857/concerta-oral/details)  
27 concerta-oral/details (last visited June 5, 2019).

28 <sup>9</sup> No psychotherapy or marital-counseling records appear in  
the record.

1 treatment." (AR 371.)

2 On March 5, 2014, Plaintiff saw Dr. Erik Lundquist<sup>10</sup> for an  
3 "initial visit." (AR 303.) He reported that his ADHD was  
4 "improving," and he needed a refill of Concerta. (Id.) Dr.  
5 Lundquist observed that Plaintiff "present[ed] with anxious/  
6 fearful thoughts, depressed mood, difficulty concentrating,  
7 difficulty falling asleep, difficulty staying asleep, [and]  
8 diminished interest or pleasure," among other symptoms. (Id.;  
9 see also AR 305.) He "had a fair response to exercise, . . .  
10 medication (Cymbalta) and sunlight" but was "[u]nder a lot of  
11 stress from school." (AR 303.) Dr. Lundquist prescribed a  
12 "[t]rial of Wellbutrin<sup>11</sup> in addition to Cymbalta as [Plaintiff]  
13 [was] not responding to maximum dose of Cymbalta." (AR 306.) He  
14 also instructed him to "[m]ake time to get some exercise." (Id.)

15 On April 30, 2014, Plaintiff mentioned to Dr. Nordstrom that  
16 ADHD behaviors were causing "problems at school." (AR 299.) He  
17 previously took 54 milligrams of Concerta and had been "able to  
18 wean down" to 36 milligrams when his "work load and work  
19 changed," but he was now "struggling to finish assignments, stay  
20 focused and be organized." (Id.) In response, the doctor  
21 changed his dosage back to 54 milligrams. (AR 300.)

22 On September 23, 2014, Plaintiff told Dr. Nordstrom that  
23 Concerta "continue[d] to work well" and that he had "improved

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25 <sup>10</sup> Dr. Lundquist's medical speciality is not stated in the  
26 record.

27 <sup>11</sup> Wellbutrin treats depression by helping restore the  
28 balance of neurotransmitters in the brain. See Wellbutrin,  
WebMD, [https://www.webmd.com/drugs/2/drug-13509/wellbutrin-oral/](https://www.webmd.com/drugs/2/drug-13509/wellbutrin-oral/details)  
details (last visited June 5, 2019).

1 focus." (AR 295.) He apparently had been "tr[ying] to go off  
2 Wellbutrin for 3 months now" and found that his anxiety was  
3 "better" with "use of Xanax<sup>12</sup> occasionally." (Id. (specifying  
4 that he took ".25 mg only a few times per week").) Occasional  
5 trazodone<sup>13</sup> for insomnia also "[w]ork[ed] well." (Id.) Dr.  
6 Nordstrom observed that Plaintiff was "[o]riented to time, place,  
7 person & situation" and had "[a]ppropriate mood and affect" but  
8 exhibited "[a]gitation" and anxiety. (AR 297.)

9 Plaintiff went to urgent care on November 3, 2014,  
10 complaining of depression. (AR 473.) The psychiatry resident  
11 who interviewed him (see AR 476) noted that he was "occasionally  
12 tearful" and said that "he had been separated from [his] wife for  
13 the last 2-3 months" and had "had crying spells for the last 2  
14 days" (AR 473). He "mentioned school difficulties as another  
15 stressor." (Id.) He denied any suicidal ideation and was "not  
16 willing to get long term psych[iatric] care from VA at this time,  
17 as VA would not prescribe [C]oncerta as first line ADD  
18 medication." (Id.) The resident noted that Plaintiff also  
19 "declined mental health care in 2012 after intake" "due to this  
20 reason." (Id.) "He also complained" about the "limited therapy  
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24 <sup>12</sup> Xanax is a benzodiazepine that treats anxiety and panic  
25 disorders. See Xanax, WebMD, <https://www.webmd.com/drugs/2/drug-9824/xanax-oral/details> (last visited May 22, 2019).

26 <sup>13</sup> Trazodone treats depression. See Trazodone, WebMD,  
27 <https://www.webmd.com/drugs/2/drug-11188-1340/trazodone-oral/trazodone-extended-release-oral/details> (last visited May 22,  
28 2019).

1 he could get from VA." (Id.)<sup>14</sup> He was not seeing a  
2 psychiatrist; his medications were prescribed by a primary-care  
3 physician. (AR 474.) "After some supportive therapy," Plaintiff  
4 felt "better" and "more future oriented to follow with tricare"<sup>15</sup>  
5 mental health and talk[] with friends to get over this difficult  
6 period." (Id.; see also AR 476 (noting that he would "benefit  
7 from therapy for better coping skills").) On examination, he  
8 appeared "alert and attentive," with a "cooperative" attitude,  
9 "linear and logical" thought patterns, "normal" speech, and  
10 "intact" and "good" insight and judgment but "low" mood. (AR  
11 475.) The resident concluded that Plaintiff did not "warrant  
12 psychiatric inpatient admission at the moment" (AR 476) and noted  
13 that he "was offered intake but state[d] he will just use his  
14 tricare" (AR 477).

15 On November 18, 2014, Plaintiff reported to Dr. Nordstrom  
16 that he wanted to "consider resuming his Wellbutrin" because  
17 although "he is doing a little better recently," Wellbutrin "was  
18 beneficial" in the past. (AR 291.) Dr. Nordstrom prescribed  
19 Wellbutrin as requested and encouraged Plaintiff to "quit smoking  
20 and alcohol" and "increase exercise and healthy diet." (AR 293.)

21 At a December 2015 office visit, Plaintiff requested a  
22 refill of Concerta and reported that he was "doing well on  
23 current dose." (AR 549.) His last refill had been in July 2015.

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25 <sup>14</sup> As noted earlier, Plaintiff did not submit any records of  
26 therapy from a VA provider or otherwise.

27 <sup>15</sup> Tricare is the health-care program for uniformed service  
28 members and veterans. See About Us, Tricare, <https://www.tricare.mil/About> (last visited June 5, 2019).

1 (Id.) That same day, Plaintiff was given a PTSD screening, which  
2 was "negative." (AR 574.)

3 b. *Dr. Zhang's examination record and opinion*

4 Plaintiff met with state-agency consulting psychologist  
5 Zhang on February 11, 2016. (See generally AR 537-43.) He  
6 reported a "history of PTSD from his military trauma, with  
7 symptom onset around 2004." (AR 538.)<sup>16</sup> His symptoms included  
8 "depressed mood and anxiety," and he was taking Wellbutrin,  
9 Concerta, and Ambien.<sup>17</sup> (Id.) He had "no history of inpatient  
10 psychiatric treatment" but "received some mental health  
11 counseling in the past with some positive results." (Id.) He  
12 reported that he lived with a roommate, had a "fair" relationship  
13 with his family, was "able to take care of his basic grooming and  
14 hygiene needs," and could "drive himself" and "go out alone."  
15 (AR 539.) He had "some difficulty" with chores because of "lack  
16 of motivation and energy" but could "prepare simple meals."  
17 (Id.) He spent "most of his day caring for his mother, reading,  
18 and cooking." (Id.)

19 Dr. Zhang observed that Plaintiff was "oriented to time,  
20 person, place, and situation." (Id.) He appeared "mildly  
21 depressed with constricted affect" but "denie[d] having feelings  
22 of hopelessness, helplessness and worthlessness" or any suicidal  
23 ideation. (Id.) He reported "feelings of sadness, irritability,

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25 <sup>16</sup> This conflicts with Plaintiff's statements at other times  
26 that his PTSD stemmed from a 1991 attempted carjacking. (See,  
e.g., AR 363.)

27 <sup>17</sup> Ambien treats insomnia. See Ambien, WebMD, [https://](https://www.webmd.com/drugs/2/drug-9690/ambien-oral/details)  
28 [www.webmd.com/drugs/2/drug-9690/ambien-oral/details](https://www.webmd.com/drugs/2/drug-9690/ambien-oral/details) (last visited  
June 5, 2019).

1 and anger" and "having flashback and nightmares of his past  
2 trauma." (Id.) His judgment and insight were "fair." (AR 540.)  
3 Clinical testing showed that he was "functioning in the average  
4 range of intelligence" (AR 541) but that his memory capacity was  
5 "slightly below average" (AR 542). The "Trail Making" test,  
6 which "measures sustained attention, visual search, and  
7 psychomotor efficiency," showed "below average performance," but  
8 apparently primarily as to Part B, which "adds the complex  
9 requirement of shifting effectively and accurately between  
10 different paradigms." (Id. (showing "0" mistakes as to Part A  
11 and "multiple" for Part B).) Dr. Zhang deemed Plaintiff's  
12 prognosis "guarded." (Id.)

13 Dr. Zhang found "[n]o impairment" in Plaintiff's ability to  
14 "understand, remember, and carry out simple instructions" and  
15 "[m]ild impairment" in his ability to do the same for "detailed  
16 and complex instructions." (Id.) He also found "[m]ild  
17 impairment" in his ability "associated with daily work activity,  
18 including attendance and basic safety," and his "[a]bility to  
19 perform work activity without special or additional supervision."  
20 (Id.) He had "[m]oderate impairment" in his ability to "maintain  
21 concentration, persistence, and pace in common work settings,"  
22 "interact appropriately with co-workers, supervisors, and the  
23 public," "maintain consistent attendance," "perform routine work  
24 duties," and "respond appropriately to usual work situations and  
25 to changes in a routine work setting." (AR 542-43.)



1                   c.    *State-agency reviewing-physician opinions*  
2                               *related to mental health*

3           On March 14, 2016, reviewing psychiatrist K. Loomis<sup>18</sup>  
4 examined Plaintiff's records, including those of consulting  
5 psychologist Zhang (see AR 53-54), and determined that Plaintiff  
6 had a "[s]evere" anxiety-related disorder, with "[m]ild"  
7 restriction of daily activities, "[m]oderate" difficulties in  
8 maintaining social functioning and concentration, persistence, or  
9 pace, and no episodes of decompensation (AR 55). Dr. Loomis  
10 found that his anxiety was of neither primary nor secondary  
11 "priority" but rather "[o]ther," less than certain physical  
12 ailments. (Id.) In assessing his mental RFC, the doctor  
13 determined that his "ability to remember," "understand," and  
14 "carry out detailed instructions" was "[m]oderately limited" (AR  
15 59), as was his "ability to interact appropriately with the  
16 general public" (AR 60). But all other functional mental  
17 abilities were "[n]ot significantly limited," including his  
18 "ability to ask simple questions or request assistance," "accept  
19 instructions and respond appropriately to criticism from  
20 supervisors," "get along with coworkers or peers," "maintain  
21 regular attendance," and "maintain socially appropriate  
22 behavior." (AR 59-60.)

23           Dr. Loomis "[a]gree[d]" with Dr. Zhang's recommendation of  
24 "unskilled" and "nonpublic" work, writing that Plaintiff could  
25

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26           <sup>18</sup> Dr. Loomis's electronic signature includes a medical-  
27 specialty code of 37, indicating a psychiatry practice. (See AR  
28 54, 63); Program Operations Manual System (POMS) DI 24501.004,  
U.S. Soc. Sec. Admin. (May 22, 2019), <https://secure.ssa.gov/apps10/poms.nsf/lrx/0424501004>.

1 "maintain concentration, persistence and pace throughout a normal  
2 workday/workweek as related to simple/unskilled tasks" and was  
3 "able to interact adequately with coworkers and supervisors but  
4 may have difficulty dealing with the demands of general public  
5 contact." (AR 54.)

6 On reconsideration July 12, 2016, psychiatrist CW Kang<sup>19</sup>  
7 found that Plaintiff's anxiety disorder was of "[s]econdary  
8 priority." (AR 70.) He noted that Plaintiff was "not in formal  
9 treatment." (AR 71.) He "agree[d] with the initial assessment,"  
10 concluding that Plaintiff's "mental allegations [were] partially  
11 consistent" and his "mental status" was "benign." (Id.; compare  
12 AR 59-60, with AR 74-75 (mental RFC assessment on reconsideration  
13 identical to initial assessment).)

### 14 3. Analysis

15 In assessing Plaintiff's RFC, the ALJ gave "great weight" to  
16 the state-agency reviewing psychiatrists. (AR 25.) She noted  
17 that they were "highly trained and experts in Social Security  
18 disability evaluations and had the benefit of reviewing the  
19 longitudinal treatment record from multiple providers," and  
20 "their opinions appear[ed] to be the most consistent with the  
21 totality of the evidence." (Id.) She gave "some weight, but not  
22 full weight," to consulting psychologist Zhang, finding that the  
23 state-agency reviewing physicians' opinions were "more consistent  
24 with the evidence as a whole." (AR 26.)

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25  
26 <sup>19</sup> Dr. Kang's electronic signature includes a medical-  
27 specialty code of 37, indicating a psychiatry practice. (See AR  
28 71); Program Operations Manual System (POMS) DI 24501.004, U.S.  
Soc. Sec. Admin. (May 15, 2015), [https://secure.ssa.gov/apps10/  
poms.nsf/lnx/0424501004](https://secure.ssa.gov/apps10/poms.nsf/lnx/0424501004).

1 Contrary to Plaintiff's assertion, the ALJ did not  
2 necessarily "reject[]" Dr. Zhang's opinion that he was moderately  
3 limited in his ability to "interact appropriately with  
4 supervisors," "maintain consistent attendance," "perform routine  
5 work duties," and "respond appropriately to work situations or  
6 changes in a routine work setting." (J. Stip. at 5.)<sup>20</sup> Indeed,  
7 the ALJ limited him to "unskilled work," "occasional superficial  
8 interaction with the public," and "occasional interaction with  
9 co-workers." (AR 21.) Moderate impairment does not mean total  
10 impairment, nor does it necessarily correlate to any specific  
11 work limitations. See Stubbs-Danielson v. Astrue, 539 F.3d 1169,  
12 1173-74 (9th Cir. 2008) (finding that ALJ properly translated  
13 moderate mental limitations assessed by one doctor into "concrete  
14 restrictions," such as "restriction to simple tasks"); Schultz v.  
15 Berryhill, No. 2:15-cv-00804-PAL, 2018 WL 4623109, at \*13 (D.  
16 Nev. Sept. 26, 2018) (finding that ALJ properly restricted

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17  
18 <sup>20</sup> Plaintiff argues in his reply that the ALJ "fail[ed] to  
19 account for the limitations assessed in . . . pace" (J. Stip. at  
20 12), but his opening argument appears to recognize that the ALJ  
21 did not reject Dr. Zhang's findings as to pace (id. at 5 (listing  
22 findings ALJ allegedly rejected but not including moderate  
23 limitation on "concentration, persistence, and pace")); indeed,  
24 the ALJ expressly found the same limitation at step three (AR  
25 20). And Plaintiff nowhere in his issues presented asserts that  
26 the ALJ erred in determining his RFC. (See J. Stip. at 4.)  
27 Raising an argument for the first time in a reply forfeits it.  
28 See Willens v. Berryhill, 709 F. App'x 867, 868 (9th Cir. 2017);  
see also Anderson v. Colvin, 223 F. Supp. 3d 1108, 1131 (D. Or.  
2016) (declining to consider argument not "properly" presented  
"because all issues must be raised in the initial brief");  
Fierros v. Colvin, No. CV 13-3839-SP, 2014 WL 1682058, at \*11 n.8  
(C.D. Cal. Apr. 29, 2014) ("Because these arguments were not  
raised in the first instance in plaintiff's Memorandum, they are  
waived."). The Court therefore declines to consider whether the  
ALJ erred in her RFC analysis.

1 claimant with "non-exertional moderate limitations" to  
2 "unskilled" work, among other limitations); (see also J. Stip. at  
3 8-9 (Defendant arguing same)).<sup>21</sup>

4 Although the ALJ did not explicitly state how she discounted  
5 portions of Dr. Zhang's opinion, the Court is entitled to draw  
6 reasonable inferences from her decision. See Magallanes, 881  
7 F.2d at 755; see also Warner v. Astrue, No. CV. 08-6001 ST., 2009  
8 WL 1255466, at \*9-11 (D. Or. May 4, 2009) (ALJ's rejection of one  
9 doctor's stated limitation could be inferred from his adoption of  
10 other doctors' less restrictive limitation).

11 The ALJ noted (see AR 22, 37), and Dr. Zhang acknowledged  
12 (see AR 538), that Plaintiff had almost no specialized mental-

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14 <sup>21</sup> In his reply, Plaintiff cites several unpublished cases  
15 to support his argument that the ALJ's alleged "failure to  
16 account" for limitations Dr. Zhang assessed was harmful (see J.  
17 Stip. at 12-13), but none are on point. In Bagby v. Comm'r Soc.  
18 Sec., 606 F. App'x 888, 890 (9th Cir. 2015), the ALJ erred by  
19 "fully crediting" a doctor's opinion and then not including  
20 "credible limitations" that the doctor assessed in the  
21 plaintiff's RFC. In Betts v. Colvin, 531 F. App'x 799, 800 & n.1  
22 (9th Cir. 2013), the ALJ similarly erred by giving "greatest  
23 weight" to a medical opinion and then disregarding aspects of it  
without explanation. Likewise, in Olmedo v. Colvin, No. 1:14-cv-  
621-SMS., 2015 WL 3448093, at \*8-9 (E.D. Cal. May 28, 2015), the  
ALJ gave "great weight" to two medical opinions and then  
neglected to account for certain limitations they found. But  
here, the ALJ gave only "some" weight to Dr. Zhang's opinion and,  
as explained below, provided a specific and legitimate reason for  
partially discounting it. (AR 26.)

24 Shea v. Astrue, NO. ED CV 12-86-E, 2012 WL 12878360, at \*2-3  
25 (C.D. Cal. Aug. 10, 2012), is also unhelpful to Plaintiff; in  
26 that case, "no doctor opined" that the plaintiff could perform  
27 simple tasks, and so the ALJ "had no medical basis to conclude  
28 that the restriction to simple, repetitive tasks . . . accounted  
for all the mental limitations the ALJ and the medical experts  
found to exist." Here, several doctors found that Plaintiff  
could perform according to his RFC. (See AR 54, 59-60.)

1 health treatment records. Plaintiff's argument that Dr.  
2 Matloff's finding as part of a VA disability determination that  
3 he would have "occasional decrease[s] in work efficiency and  
4 intermittent periods of inability to perform occupational tasks"  
5 (AR 366; see also J. Stip. at 7) supported Dr. Zhang's opinion  
6 that he was "moderate[ly]" impaired in his ability to "maintain  
7 consistent attendance and . . . perform routine work duties" (AR  
8 542), among other things, is not compelling. The ALJ properly  
9 discounted Plaintiff's disability rating from the VA (see AR 24),  
10 which Plaintiff does not contest (see generally J. Stip.). As  
11 the ALJ noted, "[a] Veterans Affairs disability decision is a  
12 decision by a governmental agency about whether an individual is  
13 disabled based on that agency's rules," not "on Social Security  
14 law," and so it's "not binding." (AR 24 (emphasis in original));  
15 see also § 404.1504. And as Defendant argues, VA doctor  
16 Matloff's particular finding was subject to that same analysis.  
17 (See J. Stip. at 11). And in any event, Dr. Matloff noted in the  
18 same report that Plaintiff functioned "satisfactorily, with  
19 normal routine behavior, self-care and conversation" (AR 366),  
20 had "considerable improvement in his concentration and attention"  
21 (id.), and was not working because of "pain," not mental  
22 limitations (AR 367; see also J. Stip. at 11 (Defendant arguing  
23 same)). Moreover, no basis exists to equate Dr. Matloff's use of  
24 the term "occasional" to mean 20 percent of the time, as  
25 Plaintiff attempts to do (see J. Stip. at 11), because the  
26 terminology in the two disability schemes is not the same. See  
27 Carinio v. Berryhill, 736 F. App'x 670, 674 (9th Cir. 2018)  
28 (noting that "Social Security regulations use different

standards" from VA in determining disability). As Defendant points out, no doctor, including Dr. Matloff, actually opined or even suggested that Plaintiff would be "off task 20% of the time." (J. Stip. at 11.)

Furthermore, Dr. Zhang's examination findings did not support the moderate restrictions he imposed. He acknowledged that Plaintiff had "no history of inpatient psychiatric treatment" and was not currently receiving mental-health counseling. (AR 538.) His clinical findings showed that Plaintiff had "below average performance" in a "timed task that measures sustained attention, visual search, and psychomotor efficiency," but that was apparently primarily as to the "complex requirement of shifting effectively and accurately between different paradigms" (AR 542); Plaintiff also had "slightly below average" "memory capacity" (*id.*). But neither finding explains why Plaintiff would be moderately impaired interacting "appropriately with co-workers, supervisors, and the public," maintaining "concentration, persistence, and pace in common work settings," keeping "consistent attendance,"<sup>22</sup> responding

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<sup>22</sup> Moreover, Dr. Zhang contradicted himself in assessing Plaintiff's ability to maintain attendance. He found both that Plaintiff would be only mildly impaired in maintaining "attendance" associated with "daily work activity" but also moderately impaired in "maintain[ing] consistent attendance." (AR 542.) He nowhere explained the inconsistency. See Jessaca L. v. Comm'r Soc. Sec., No. 3:18-cv-05408-TLF, 2019 WL 2004763, at \*4 (W.D. Wash. May 7, 2019) ("An ALJ may discount an examining doctor's opinion based on its inconsistencies with the doctor's own notes.").

In his reply, Plaintiff argues that failure to attend the  
(continued...)

1 "appropriately to usual work situations and to changes in a  
2 routine work setting," or performing "routine work duties" (AR  
3 542-43). Dr. Zhang's objective findings were "essentially  
4 benign," as noted by the ALJ. (AR 26; see also AR 539-43.)

5 Inconsistency with the medical evidence, including a  
6 doctor's own notes, is a specific and legitimate reason to  
7 discount a physician's opinion. See Tommasetti v. Astrue, 533  
8 F.3d 1035, 1041 (9th Cir. 2008); Jessaca L. v. Comm'r Soc. Sec.,  
9 No. 3:18-cv-05408-TLF, 2019 WL 2004763, at \*4 (W.D. Wash. May 7,  
10 2019) ("An ALJ may discount an examining doctor's opinion based  
11 on its inconsistencies with the doctor's own notes."); see also  
12 Rollins v. Massanari, 261 F.3d 853, 856 (9th Cir. 2001) (ALJ  
13 permissibly rejected physician's opinion when it was  
14 "implausible" and "not supported by any findings by any doctor,"  
15 including herself).

16 Unlike Dr. Zhang, the state-agency reviewing psychiatrists  
17 found that Plaintiff's limitations were mostly not significant  
18 (see AR 59-60, 74-75), and the ALJ assigned their opinions "great  
19 weight" (AR 25), a finding Plaintiff has not challenged. Because  
20 Dr. Zhang's opinion was contradicted by other medical-opinion  
21 evidence, the ALJ needed to provide only a "specific and  
22

23 <sup>22</sup> (...continued)  
24 hearing and his "academic probation" are evidence of his "trouble  
25 with attendance." (J. Stip. at 13 n.2.) But as the ALJ pointed  
26 out, he provided no actual evidence concerning his academic  
27 status (AR 22), just attorney argument, and what evidence there  
28 was in the record about his nonappearance at the hearing was  
contradictory (compare AR 16-17 & 149, with AR 39). Moreover, it  
seems reasonable to infer that any attendance issues Plaintiff  
may have had arose at least in part from his alcohol abuse. See  
infra note 36.

1 legitimate reason" for discounting it, Carmickle, 533 F.3d at  
2 1164 (citing Lester, 81 F.3d at 830-31), and she did so. See  
3 Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th  
4 Cir. 2004) (lack of "supportive objective evidence" and  
5 "contradict[ion] by other statements and assessments of  
6 [plaintiff's] medical condition" were "specific and legitimate  
7 reasons" to discount physicians' opinions); see also Saelee, 94  
8 F.3d at 522 ("findings of a nontreating, nonexamining physician  
9 can amount to substantial evidence, so long as other evidence in  
10 the record supports those findings").

11 For all the foregoing reasons, the ALJ did not err in giving  
12 Dr. Zhang's opinion only "some weight" (AR 26), and remand is not  
13 warranted on this basis.

14 B. The ALJ Properly Evaluated Plaintiff's Subjective  
15 Symptom Testimony

16 Plaintiff claims that the ALJ erred by failing to "provide  
17 clear and convincing reasons to reject [his] subjective  
18 limitations." (J. Stip. at 14; see also generally id. at 14-17,  
19 22-23.) But as set forth below, the ALJ provided ample support  
20 for her finding that Plaintiff's "statements concerning the  
21 intensity, persistence and limiting effects of [his] symptoms  
22 [were] not entirely consistent with the medical evidence and  
23 other evidence in the record." (AR 23.) Thus, remand is not  
24 warranted on this ground.

25 1. Applicable law

26 An ALJ's assessment of a claimant's allegations concerning  
27 the severity of his symptoms is entitled to "great weight."  
28 Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir. 1989) (as amended)



(citation omitted); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985) (as amended Feb. 24, 1986). "[T]he ALJ is not required to believe every allegation of disabling pain, or else disability benefits would be available for the asking, a result plainly contrary to 42 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012) (citing Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989)).

In evaluating a claimant's subjective symptom testimony, the ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d at 1035-36; see also SSR 16-3p, 2016 WL 1119029, at \*3 (Mar. 16, 2016).<sup>23</sup> "First, the ALJ must determine whether the claimant has presented objective medical evidence of an underlying impairment [that] could reasonably be expected to produce the pain or other symptoms alleged." Lingenfelter, 504 F.3d at 1036 (citation omitted). If such objective medical evidence exists, the ALJ may

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<sup>23</sup> The Commissioner applies SSR 16-3p to all "determinations and decisions on or after March 28, 2016." Soc. Sec. Admin., Policy Interpretation Ruling, SSR 16-3p n.27, <https://www.ssa.gov/OPHome/rulings/di/01/SSR2016-03-di-01.html> (last visited May 22, 2019). Thus, it applies here. Though the new ruling eliminates the term "credibility" and focuses on "consistency" instead, Plaintiff refers to credibility (see J. Stip. at 15-16), and much of the relevant case law uses that language too. But as the Ninth Circuit has clarified, SSR 16-3p

makes clear what our precedent already required: that assessments of an individual's testimony by an ALJ are designed to "evaluate the intensity and persistence of symptoms after [the ALJ] find[s] that the individual has a medically determinable impairment(s) that could reasonably be expected to produce those symptoms," and not to delve into wide-ranging scrutiny of the claimant's character and apparent truthfulness.

Trevizo v. Berryhill, 871 F.3d 664, 678 n.5 (9th Cir. 2017) (as amended) (alterations in original) (quoting SSR 16-3p).

1 not reject a claimant's testimony "simply because there is no  
2 showing that the impairment can reasonably produce the degree of  
3 symptom alleged." Smolen, 80 F.3d at 1282 (emphasis in  
4 original), superseded in part by statute on other grounds, §  
5 404.1529.

6 If the claimant meets the first test, the ALJ may discount  
7 the claimant's subjective symptom testimony only if she makes  
8 specific findings that support the conclusion. See Berry v.  
9 Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent a finding or  
10 affirmative evidence of malingering, the ALJ must provide a  
11 "clear and convincing" reason for rejecting the claimant's  
12 testimony. Brown-Hunter v. Colvin, 806 F.3d 487, 493 (9th Cir.  
13 2015) (as amended) (citing Lingenfelter, 504 F.3d at 1036);  
14 Treichler v. Comm'r of Soc. Sec. Admin., 775 F.3d 1090, 1102 (9th  
15 Cir. 2014). The ALJ may consider, among other factors, (1) the  
16 claimant's reputation for lying, prior inconsistent statements,  
17 and other testimony by the claimant that appears less than  
18 candid; (2) unexplained or inadequately explained failure to seek  
19 treatment or to follow a prescribed course of treatment; (3) the  
20 claimant's daily activities; (4) the claimant's work record; and  
21 (5) testimony from physicians and third parties. Rounds v.  
22 Comm'r Soc. Sec. Admin., 807 F.3d 996, 1006 (9th Cir. 2015) (as  
23 amended); Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir.  
24 2002). If the ALJ's evaluation of a plaintiff's alleged symptoms  
25 is supported by substantial evidence in the record, the reviewing  
26 court "may not engage in second-guessing." Thomas, 278 F.3d at  
27 959.

28 Contradiction with evidence in the medical record is a

1 "sufficient basis" for rejecting a claimant's subjective symptom  
2 testimony. Carmickle, 533 F.3d at 1161; see also Morgan v.  
3 Comm'r of Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir. 1999)  
4 (upholding "conflict between [plaintiff's] testimony of  
5 subjective complaints and the objective medical evidence in the  
6 record" as "specific and substantial" reason undermining  
7 statements). But it "cannot form the sole basis for discounting  
8 pain testimony." Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir.  
9 2005); Rollins, 261 F.3d at 857 (citing then-current version of  
10 § 404.1529(c)(2)).

## 11 2. Relevant background

### 12 a. *Plaintiff's statements*

13 In a November 16, 2015 function report, Plaintiff wrote that  
14 he had "[l]imited mobility" and couldn't "stand or walk for  
15 extended periods" or "lift heavy items." (AR 200.) He also  
16 couldn't "be around large groups of people," had "[p]roblems  
17 concentrating or remembering things," needed "access to [a]  
18 restroom 15-20 times a day," and couldn't "drive for extended  
19 distances." (Id.) On an average day, he would "[s]hower,"  
20 "[s]tudy," and do "[l]imited housework," including cooking and  
21 cleaning. (AR 201.) He helped his son with "[d]aily activities"  
22 and took care of "cats." (Id.) His wife apparently helped "at  
23 times." (Id.) He had to "wear slip on shoes due to back pain."  
24 (Id.) He needed reminders to take his medication (AR 202) and  
25 couldn't "cook from scratch" because of problems standing "for  
26 extended periods" (AR 201, 202). He spent "10-15 minutes"  
27 preparing food "daily," made his bed, cleaned the "bathroom and  
28 kitchen," and did "[l]aundry sometimes." (AR 202.) He went out

1 alone "sometimes" and shopped for "[f]ood, [c]lothes, [and]  
2 [h]ousehold items" once a week for "up to 30 minutes." (AR 203.)  
3 He had a "90% reduction" in his athletic hobbies "due to pain,  
4 range of motion and anxiety." (AR 204.) He spent time "at home  
5 with visitors" and "[ate] out with friends" once every "1-2  
6 weeks." (Id.) He went to restaurants and barbeques "on a  
7 regular basis" (id.) but did not "go out in public as much" since  
8 going through a divorce (AR 205).

9 Plaintiff wrote that his impairments affected "lifting,"  
10 "squatting," "bending," "standing," "reaching," "walking,"  
11 "sitting," "kneeling," "stair-climbing," "memory," "completing  
12 tasks," "concentration," "using hands," and "getting along with  
13 others." (Id.) He could not "lift more than 30lbs or bend" or  
14 "stand/walk for extended periods." (Id.) He was "[e]asily  
15 irritated." (Id.) His attention span and ability to follow  
16 written instructions "varie[d]." (Id.) He got along with  
17 authority figures "well at times" but did not handle stress well  
18 "any longer" and needed to "[t]ry not to deviate from established  
19 routine." (AR 206.) He suffered "[e]xtreme anxiety and feeling  
20 [sic] of hopelessness" as well as "[f]ear of wife leaving."  
21 (Id.)

22 In his May 18, 2016 request for reconsideration, Plaintiff  
23 wrote that he had "very limited movement of neck and extreme pain  
24 in neck from previous fracture" and "[l]imited use of right hand  
25 and increased pain from nerve damage." (AR 221; see also AR 227  
26 (reporting that he had "limited ability to conduct basic daily  
27 activities due to neck and spine pain and limited use of right  
28 hand").) He had had "xrays" and was "waiting" for an MRI for his

1 "[n]eck and right wrist/hand pain." (AR 222.) His "[d]ecreased  
2 capabilit[ies] in day to day functions due to extreme depression  
3 ha[d] resulted in divorce." (AR 221; but see AR 227 (writing  
4 that divorce was "due to emotional state").) He was taking  
5 Wellbutrin for depression, Concerta for ADD, and Xanax for  
6 anxiety, all prescribed by Dr. Nordstrom. (AR 225.) He was  
7 "[n]o longer" able to "go out" or "go to school." (AR 226.)

8 Plaintiff did not show up for his April 2017 hearing and  
9 thus did not testify. (See generally AR 35-39 (discussing  
10 failure to attend).) The ALJ left the record open (AR 47-48) for  
11 "over five months" (AR 17) so that he could submit "additional  
12 statements . . . regarding his impairments," among other  
13 documents, but "no additional evidence [was] received" (id.).

14 b. *Records related to physical impairments*

15 On December 5, 2013, Plaintiff complained to a nurse in Dr.  
16 Nordstrom's office of "back pain and constant chest pain" and  
17 "joint pain [i]n feet, ankle and knees." (AR 328.) He claimed  
18 that "he was informed it was degenerative bone disease from Navy  
19 doctor 13 years ago." (Id.) He told Dr. Nordstrom that he had  
20 "[s]een a chiropractor which helped some" but was not exercising  
21 "due to the increased pain." (Id.) The doctor noted that a  
22 "[r]ecent back MRI showed mild stenosis only." (Id.) His "right  
23 lower lumbar paraspinal muscle" was "tender[] to palpation." (AR  
24 330.) Dr. Nordstrom recommended exercise and wrote that he would  
25 "place a referral for physical therapy." (AR 330-31.)

1 VA doctor Robert Gaumer<sup>24</sup> examined Plaintiff for back and  
2 foot conditions on August 29, 2013 (see generally AR 346-57,  
3 362), and found that he had limited forward flexion (see AR 349)  
4 but otherwise normal range of motion (see AR 340-50) in his  
5 thoracolumbar spine. He had "localized tenderness or pain to  
6 palpation" but no "guarding or muscle spasm." (AR 352.) His  
7 muscle strength in his hips, knees, ankles, and toes was "4/5" or  
8 "5/5" (AR 352-53), and his knee and ankle reflexes were normal  
9 (AR 353). He had a positive straight-leg-raise test<sup>25</sup> on the  
10 right side and mild to moderate signs of radiculopathy in his  
11 right leg. (AR 354.) He did not need an assistive device to  
12 ambulate. (AR 355, 361.) The provider concluded that Plaintiff  
13 had "[m]inimal osteophytosis and disk space narrowing at L5-S1"  
14 (AR 357) but no functional impairments (AR 355). His back  
15 condition had no "impact on his . . . ability to work (AR 356),  
16 nor did his foot condition (see AR 362).

17 In August 2014, Plaintiff saw chiropractor Lee Hazen for  
18 lower-back pain. (AR 524.) Dr. Hazen performed manipulation,  
19 which Plaintiff "tolerated . . . well." (Id.) He went to Dr.  
20 Hazen again in March 2015, complaining of "persistent lower back  
21 pain and bilateral buttocks pain." (AR 525.) He was apparently  
22 not visiting the office regularly "primarily due to lack of  
23

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24 <sup>24</sup> Dr. Gaumer's medical speciality is not stated in the  
25 record.

26 <sup>25</sup> A straight-leg-raise test checks the mechanical movement  
27 of neurological tissues and their sensitivity to stress and  
28 compression when disc herniation is suspected. See Straight Leg  
Raise Test, Physiopedia, [https://www.physio-pedia.com/](https://www.physio-pedia.com/Straight_Leg_Raise_Test)  
Straight\_Leg\_Raise\_Test (last visited June 7, 2019).

1 insurance coverage and financial means." (Id.) He was doing his  
2 exercises "in[]frequently." (Id.) His "deep tendon reflex[es]"  
3 were "within normal limits," muscle strength was "intact," and  
4 his range of motion was "within normal limits." (Id.) But he  
5 had "[p]ain on palpation and somatic dysfunction . . . at the L3  
6 through S1 vertebral level," and "Kemps sign<sup>26</sup> [was] positive."  
7 (Id.) Dr. Hazen recommended that he "exercise more frequently."  
8 (Id.) Records dated April and August 2015 contain largely the  
9 same findings. (See AR 526, 527, 528.) On September 3, 2015,  
10 Plaintiff apparently reported that his pain was "better today  
11 than the last visit." (AR 530.) The doctor's notes and  
12 recommendations remained the same. (See id.)

13 On January 27, 2016, Plaintiff saw consulting orthopedic  
14 surgeon Vicente Bernabe. (See AR 531-36.) He complained of  
15 "multiple joint and extremity pain" and reported that he had  
16 "received physical therapy and chiropractic treatment for his  
17 back pain and neck pain, but no surgical intervention." (AR  
18 532.) He was "no longer receiving any physical therapy or  
19 chiropractic treatment" and took medications for the pain. (Id.)  
20 Dr. Bernabe observed that Plaintiff "moved freely . . . without  
21 the use of any assistive device" and had "normal" gait. (AR  
22 533.) His neck range of motion was normal, and "inspection of  
23 the thoracic spine was unrevealing." (Id.) His back range of  
24 motion was somewhat limited (see id.), and "there [was]  
25 tenderness to palpation at the lower lumbar region" (AR 534).

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26  
27 <sup>26</sup> The Kemp test assesses the lumbar-spine facet joints to  
28 detect pain. See Kemp test, Physiopedia, [https://www.physio-pedia.com/KEMP\\_test](https://www.physio-pedia.com/KEMP_test) (last visited June 7, 2019).

1 The straight-leg-raise test was negative bilaterally. (Id.) Dr.  
2 Bernabe noted that Plaintiff had "well healed arthroscopic  
3 surgical scars on both shoulders" (AR 534; see also AR 532  
4 (noting surgeries from before relevant period)) and that his  
5 range of motion was normal bilaterally (AR 534). His elbows,  
6 wrists, hands, hips, knees, ankles, and feet were all "normal."  
7 (See id.) Dr. Bernabe diagnosed lumbar strain and determined  
8 that Plaintiff could "lift and carry no more than 50 pounds  
9 occasionally and 25 pounds frequently," "push and pull without  
10 restrictions," "walk and stand six hours out of an eight-hour day  
11 with normal breaks," "bend[], kneel[], stoop[], crawl[], and  
12 crouch[] . . . without limitation," "walk on uneven terrain,  
13 climb ladders, and work at heights without restrictions," "sit  
14 without restrictions," and perform manipulation without  
15 restrictions. (AR 535-36.)

16 In February 2016, the state-agency reviewing doctor at the  
17 initial level, V. Michelotti,<sup>27</sup> found a primary diagnosis of  
18 severe discogenic and degenerative back disorder and a secondary  
19 diagnosis of severe joint dysfunction. (AR 54, 55.) The doctor  
20 noted that "[r]ecords d[id] not cover the span of [Plaintiff's]  
21 allegations" and that the consulting orthopedist's medical-source  
22 statement was "consistent with a medium RFC, which is a snapshot  
23 underestimate of limitations." (AR 54.) Dr. Michelotti  
24 ultimately assessed a light RFC with postural limitations (see AR

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26 <sup>27</sup> Dr. Michelotti's electronic signature includes a medical-  
27 specialty code of 32, indicating a pediatrics practice. (See AR  
28 54, 63); Program Operations Manual System (POMS) DI 24501.004,  
U.S. Soc. Sec. Admin. (May 22, 2019), [https://secure.ssa.gov/  
apps10/poms.nsf/lrx/0424501004](https://secure.ssa.gov/apps10/poms.nsf/lrx/0424501004).



1 57) but commented that "[t]here [was] no evidence of a  
2 consecutive 12 month period during which [Plaintiff] would have  
3 required a more restrictive [than medium] RFC" (AR 54). On  
4 reconsideration, the state-agency reviewing doctor wrote that  
5 "light RFC seems appropriate[;] adopt light RFC." (AR 69; see  
6 also AR 73.)

7 An MRI of Plaintiff's cervical spine in May 2016 showed that  
8 he had "no acute fracture or subluxation" and that "vertebral  
9 body heights," "disc heights and signal" were preserved. (AR  
10 553.) The neuroradiologist found "[m]ultilevel facet hypertrophy  
11 with mild left neural foraminal stenosis at C2-3 and mild  
12 bilateral neural foraminal stenosis at C6-7 and C7-T1." (AR  
13 554.) An x-ray of the cervical spine showed that alignment was  
14 "within normal limits" and "[a]ll vertebral bodies and  
15 intervertebral disc spaces [were] maintained." (AR 555.)  
16 Plaintiff's paravertebral soft tissues were also "within normal  
17 limits." (Id.) An x-ray of his right wrist showed "[n]o acute  
18 fracture or dislocation." (AR 556.)

19 c. *Records related to Crohn's disease*<sup>28</sup>

20 An October 4, 2012 gastrointestinal biopsy "indicated the  
21 presence of chronic inflammation," which could be "due to  
22 infections or conditions such as inflammatory bowel disease  
23 (Crohn's/ulcerative colitis)." (AR 277; see also AR 472-73 (Dr.

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24  
25 <sup>28</sup> Arguably, Plaintiff has forfeited any argument concerning  
26 his alleged Crohn's disease, raising it only in a footnote and  
27 then again in his reply. (See J. Stip. at 15 n.4, 23); Estate of  
28 Saunders v. C.I.R., 745 F.3d 953, 962 n.8 (9th Cir. 2014)  
("Arguments raised only in footnotes, or only on reply, are  
generally deemed waived."). Because it lacks merit in any event,  
the Court nonetheless considers it.

1 Gaumer recounting inconclusive history in 2015).)

2 At a January 2015 "general medical examination for  
3 administrative purposes" at a VA clinic (AR 339), Plaintiff  
4 reported that he was diagnosed with Crohn's disease in December  
5 2012 but was "not [seeking care] for this condition." (AR 341.)  
6 He complained of abdominal pain and said that he could "have  
7 diarrhea 10-15 [times] daily" and "bloody stools . . . every 6-8  
8 weeks" for "1-4 days." (Id.) Yet he "[d]enie[d] medications for  
9 Crohn's," reporting that he did "[d]iet modifications and  
10 supplements" instead. (Id.) "[C]ontinuous medication" was not  
11 "required for control" of his condition, and no "surgical  
12 treatment" had been rendered. (AR 343.) The provider flagged  
13 that Plaintiff apparently had not actually been diagnosed with  
14 Crohn's disease, noting that the "most recent VA gastroenterology  
15 report in 12/2012 indicates: 'The etiology for [Plaintiff]'s  
16 abdominal pain, intermittent diarrhea and colonoscopy findings is  
17 not entirely clear.'" (AR 345.) The report concluded that  
18 Crohn's disease was "possible as is an infectious process."  
19 (Id.)

20 At a March 2015 appointment with Dr. Nordstrom, Plaintiff  
21 complained of "nausea and diarrhea for the past week." (AR 279.)  
22 Dr. Nordstrom wrote that he had a "history of Crohn's" but "was  
23 better with healthy diet." (Id.) He observed "[t]enderness to  
24 palpation in the left upper quadrant with palpable mass, possibly  
25 muscle spasm." (AR 281.) His impression was that the pain was  
26 "possibly musculoskeletal versus intra-abdominal." (Id.) He  
27 recommended "urgent CT" and noted that the pain was "[p]ossibly  
28 related to Crohn's[] flare" and that a "GI colonoscopy" might be

1 needed in the future. (AR 282.)

2 On April 9, 2015, Plaintiff "denie[d] a GI consult" (AR  
3 466), and on May 14, 2015, he had a colonoscopy that yielded  
4 mostly "normal" results and a "patchy area of mildly erythematous  
5 mucosa"<sup>29</sup> in part of the colon. (AR 455.) Biopsies during the  
6 colonoscopy revealed "no significant histopathology," and the  
7 rectum biopsy showed only "surface hyperplastic changes." (AR  
8 481.)<sup>30</sup> The "staff physician," whose speciality was not stated  
9 in the record, recommended he take Immodium or Pepto-Bismol for  
10 diarrhea. (AR 455; see also AR 456.)

11 In August 2015, Plaintiff went to the emergency room for  
12 abdominal pain (AR 484); a CT scan showed "unremarkable" results  
13 apart from his appendix, which was "mildly prominent with mild  
14 surrounding inflammation" (AR 488). The reviewing doctor  
15 determined that "appendicitis" was "possible." (Id.; see also AR  
16 507 (stating that Plaintiff had "what appears to be early acute  
17 appendicitis").) After discussing the "medically viable  
18 alternative" of "treating his appendicitis with antibiotics,"  
19 Plaintiff opted to "proceed with laparoscopic appendectomy." (AR  
20 507; see also AR 511-12 (surgery notes).) Although Plaintiff  
21 initially reported a "previous history of colitis" (AR 484), no  
22

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23  
24 <sup>29</sup> Erythematous mucosa means that the inner lining of the  
25 digestive tract is red. See What is Erythematous Mucosa and How  
Is it Treated?, healthline, [https://www.healthline.com/health/](https://www.healthline.com/health/erythematous-mucosa)  
26 erythematous-mucosa (last visited June 5, 2019).

27 <sup>30</sup> The record does not include any follow-up treatment or  
28 discussion based on these results, nor was a diagnosis of Crohn's  
disease confirmed. (See AR 480 (noting that purpose of biopsies  
was to "rule out Crohn's").)

1 doctor connected the appendicitis with colitis (see generally AR  
2 484-512).

3 On December 22, 2015, Plaintiff told a nurse that he had  
4 "stomach pain rated as a 1" on a scale of zero to 10. (AR 575.)  
5 Over a year later, on January 18, 2017, he reported "abdominal  
6 discomfort after eating meals" and told Dr. Nordstrom that he was  
7 looking into possible food allergies. (AR 580; see also AR 584  
8 (at Jan. 4, 2017 office visit for unrelated issues, Plaintiff  
9 "wonder[ed] if he ha[d] food allergies" because his stomach  
10 cramping was "much improved with cutting out eggs and some  
11 dairy").) Dr. Nordstrom remarked that although Plaintiff was  
12 apparently "[t]old that he ha[d] Crohn's disease," he had "never  
13 had any treatment." (AR 580.) He diagnosed "[g]astroesophageal  
14 reflux disease without esophagitis" and prescribed "omeprazole"<sup>31</sup>  
15 and "Tums for breakthrough discomfort." (AR 582.) He also  
16 suggested that Plaintiff get another endoscopy and consult with a  
17 GI specialist for his "Crohn's history." (Id.)

18 On March 1, 2017, Plaintiff met with gastroenterologist and  
19 internist Gregory Ardigo, reporting "[d]igestive problems for  
20 years" and colon polyps in 2011. (AR 615.) He claimed that he  
21 was "told" he had Crohn's but was "never given treatment." (Id.)  
22 His symptoms were "[p]ain after eating" and "[b]loating  
23 discomfort"; he had "[n]o blood in stool," "black stool," or  
24 "weight loss." (Id.) He "[d]enie[d]" any "change in his bowel  
25

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26 <sup>31</sup> Omeprazole treats stomach and esophagus problems like  
27 acid reflux. See Omeprazole Capsule, Delayed Release (Enteric  
28 Coated), WebMD, <https://www.webmd.com/drugs/2/drug-3766-143/omeprazole-oral/omeprazole-delayed-release-capsule-oral/details> (last visited June 5, 2019).

1 habits, constipation, diarrhea," or any other issues apart from  
2 "abdominal pain [and] indigestion." (Id.) Dr. Ardigo's  
3 impression was that he had "GERD/[g]astroesophageal [r]eflux" and  
4 a "[p]ers[istent] h[istory] of [c]olon [p]olyps." (AR 616.) He  
5 did not confirm a diagnosis of Crohn's disease. (See generally  
6 id.) He indicated that he would conduct a colonoscopy and  
7 esophagogastroduodenoscopy with anesthesia. (Id.; see also AR  
8 618.) Neither procedure is reflected in the record, however.

9 *d. The ALJ's findings*

10 The ALJ found that Plaintiff had "not generally received the  
11 type of medical treatment one would expect for a totally disabled  
12 individual" and that his "allegations concerning the intensity,  
13 persistence and limiting effects of his symptoms [we]re less than  
14 fully persuasive." (AR 22; see also AR 23 (referring to  
15 Plaintiff's "persuasiveness" as "highly suspect based on the  
16 discrepancy between [his] subjective complaints and the objective  
17 medical evidence").) Because his allegations were "inconsistent  
18 with the objective medical evidence," she deduced that he had  
19 attempted to "exaggerate the severity of his symptoms." (AR 22.)  
20 For example, despite reporting a "history of mental health  
21 problems" he "was not currently receiving mental health  
22 treatment." (Id.) Such inconsistencies "diminishe[d] the  
23 persuasiveness" of his allegations of PTSD and depression. (Id.)

24 Furthermore, as the ALJ noted, his treating doctors never  
25 recommended any functional restrictions or indicated that his  
26 impairments would impact his ability to work. (Id.) To the  
27 contrary, for example, although the ALJ found Plaintiff to have  
28 "severe" "degenerative disc disease of the lumbar spine" (AR 19),

1 one of his treating doctors expressly noted that his back  
2 condition was not serious enough to affect his ability to work.  
3 (AR 22 (citing AR 356).) She flagged that the recent VA records  
4 did not "document a disabling musculoskeletal impairment" either.  
5 (AR 24.) And while not a treating doctor, the consulting  
6 orthopedist found in January 2016 that Plaintiff could "push and  
7 pull without restrictions, lift and carry 50 pounds occasionally  
8 and 25 pounds frequently," walk and stand "for 6 hours out of an  
9 8-hour workday with normal breaks," sit "without restrictions,"  
10 do all postural activities "without limitation," and perform any  
11 activities requiring agility, "such as walking on uneven terrain,  
12 climbing ladders, or working at heights . . . without  
13 limitation." (AR 25; see also AR 24.)

14 The ALJ also recounted Plaintiff's history of conservative  
15 treatment, stating that the "lack of more aggressive treatment"  
16 suggested his "symptoms and limitations were not as severe" as  
17 alleged. (AR 22.) And she noted that the limited treatment and  
18 medications he received "ha[d] been generally successful in  
19 controlling those symptoms," specifically pointing out that he  
20 reported being better with Wellbutrin and occasional use of  
21 Xanax. (Id.) A review of the "complete medical history" showed  
22 that he received "routine and very conservative treatment" (AR  
23 23), and his chiropractor encouraged him simply to "exercise more  
24 frequently" (AR 24; see also AR 293, 331 (Dr. Nordstrom  
25 recommending same)).

26 At step three, the ALJ found that Plaintiff had "moderate  
27 limitation[s]" in "understanding, remembering, or applying  
28 information," "interacting with others," "concentrating,

1 persisting or maintaining pace," and "adapting or managing"  
2 himself. (AR 20.) But she noted that he was "able to perform  
3 simple mathematical calculations" and "serial sevens" and that  
4 his "fund of general knowledge was intact." (Id.) Further, he  
5 was "able to take care of his basic grooming and hygiene,"  
6 "drive," "go out alone," "pay bills and handle money  
7 appropriately and responsibly," "prepare meals," "read," and  
8 "cook." (Id.) At step four, she considered his 2015 function  
9 report, in which he wrote that he "help[ed] take care of his son  
10 and cats," "prepare[d] his own simple meals," did "household  
11 chores," went "out several times a week," could drive "short  
12 distances," went out "alone," shopped "in stores," and socialized  
13 "with others." (AR 21-22.) She also recounted his reported  
14 limitations, including his difficulty being "around large groups  
15 of people," concentrating "and remembering things," and "handling  
16 stress." (AR 22.) The ALJ noted, however, that he was  
17 apparently a "full-time student attending classes five days a  
18 week on campus." (Id.) Although his attorney had indicated that  
19 he was on academic probation, he "did not submit any school  
20 records or evidence or his transcript showing any problems or  
21 success regarding his schooling" (id.) even though the ALJ left  
22 the record open for "over five months" and had asked the attorney  
23 to do so (AR 17, 39).

### 24 3. Analysis

25 Plaintiff argues that the ALJ failed to provide a clear and  
26 convincing reason to reject his subjective symptom statements.  
27 (See J. Stip. at 14.) In fact, she provided four: activities of  
28 daily living, conservative treatment, effective control of

1 symptoms with medication, and inconsistency with the objective  
2 medical evidence. (See generally AR 22-24.)

3 a. *Activities of daily living*

4 First, the ALJ recounted some of Plaintiff's activities of  
5 daily living, including taking care of his son and cats,  
6 preparing meals, doing chores, going shopping in stores, going  
7 out alone, and socializing. (AR 22.) She also noted that he  
8 attended college classes five days a week on campus.<sup>32</sup> (Id.)  
9 Plaintiff is correct that the ALJ did not explicitly state that  
10 "these activities discredited [him]" (J. Stip. at 16), but she  
11 discussed them in the context of evaluating his "persuasiveness"  
12 (see generally AR 21-22), which was sufficient. See Magallanes,  
13 881 F.2d at 755. An ALJ may discount a claimant's subjective  
14 symptom testimony when it is inconsistent with his daily  
15 activities. See Molina, 674 F.3d at 1113. "Even where those  
16 [daily] activities suggest some difficulty functioning, they may  
17 be grounds for discrediting the claimant's testimony to the  
18 extent that they contradict claims of a totally debilitating  
19 impairment." Id. Doing chores and going to school are  
20 activities that can undermine a plaintiff's subjective symptom  
21 statements. See Matthews v. Shalala, 10 F.3d 678, 679-80 (9th  
22

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23  
24 <sup>32</sup> Plaintiff asserts that Defendant's noting that he had a  
25 3.4 GPA in 2015 is an impermissible "post hoc rationalization."  
26 (J. Stip. at 22.) But the ALJ expressly cited Plaintiff's  
27 ability to stay enrolled in school as a full-time student as  
28 being inconsistent with his statements about the severity of his  
alleged symptoms. (AR 22.) There is nothing improper in  
Defendant's pointing to a detail concerning Plaintiff's schooling  
given that the ALJ expressly relied on that reason to discount  
his statements.



1 Cir. 1993) (upholding ALJ's finding that claimant's pain  
2 testimony was undermined by his ability to do chores, go  
3 shopping, and attend school three days a week, "an activity which  
4 is inconsistent with an alleged inability to perform all work").

5           b. *Conservative treatment*

6           Second, conservative treatment is a clear and convincing  
7 reason for an ALJ to discount a plaintiff's testimony regarding  
8 the severity of an impairment. Parra, 481 F.3d at 751; (see also  
9 AR 37 (ALJ commenting at hearing that she "did not see any  
10 records in connection with the claimant's mental health" and  
11 attorney agreeing that "there's very little"), 39 (ALJ noting  
12 that "musculoskeletal [records] including diagnostic tests . . .  
13 would be helpful"))).

14           Plaintiff's argument that the ALJ "did not state what type  
15 of care [he] should have received" (J. Stip. at 16) is unfounded;  
16 the ALJ stated that she would expect someone "with the alleged  
17 severity of his PTSD or depression and functional limitations" to  
18 receive specialized mental-health treatment (AR 22). Indeed,  
19 Plaintiff never saw a psychiatrist (see AR 71, 474), and although  
20 he had allegedly seen a therapist at some point, the record is  
21 devoid of any such evidence.

22           General practitioners and primary-care physicians often  
23 treat mental illnesses, however. See Sprague v. Bowen, 812 F.2d  
24 1226, 1232 (9th Cir. 1987) ("[I]t is well established that  
25 primary care physicians (those in family or general practice)  
26 'identify and treat the majority of Americans' psychiatric  
27 disorders.'" (citation omitted)). Such treatment "by itself" may  
28 not be a "clear and convincing reason" to discount a plaintiff's

1 subjective symptom statements about mental health, Rosas v.  
2 Colvin, No. CV 13-2756-SP., 2014 WL 3736531, at \*11 (C.D. Cal.  
3 July 28, 2014); but see Rosalia v. Colvin, No. 2:15-cv-0184-CKD,  
4 2016 WL 29597, at \*7 (E.D. Cal. Jan. 4, 2016) (citing ALJ's  
5 finding that "claimant [was] conservatively treated at primary  
6 care rather than counseling or therapy" as "clear and convincing  
7 reason[] for discounting plaintiff's testimony"). But even if  
8 the ALJ erred by discounting Plaintiff's subjective symptom  
9 statements because of his lack of specialized mental-health  
10 treatment (see AR 24), she properly found that he was "better"  
11 with medication (id.), which is a conservative treatment  
12 modality, as discussed below. Cf. Rosas, 2014 WL 3736531, at \*11  
13 (noting that claimant received medication from primary-care  
14 doctor but not whether such medication was helpful).<sup>33</sup>

15 Furthermore, unlike the plaintiff in Nguyen v. Chater, 100  
16 F.3d 1462, 1464-65 (9th Cir. 1996) (claimant's failure to seek  
17 any psychiatric treatment for over three years not legitimate  
18 basis for discounting medical opinion that he had severe  
19 depressive disorder), Plaintiff here did not appear to have any  
20 problem reporting or seeking care for his mental-health issues.  
21 He even went to a VA psychiatric urgent-care department for  
22 "depress[ion]" in 2014. (AR 473.) The psychiatric resident who  
23

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24 <sup>33</sup> In any event, the ALJ properly found at least two reasons  
25 in addition to conservative treatment to discount Plaintiff's  
26 subjective symptom statements, thus rendering any error in citing  
27 his lack of specialized care harmless. See Larkins v. Colvin,  
28 674 F. App'x 632, 633 (9th Cir. 2017) ("[B]ecause the ALJ gave  
specific, clear and convincing reasons for finding [plaintiff]  
not fully credible, any error in the additional reasons the ALJ  
provided for finding [her] not fully credible was harmless.").

1 met with him "[p]rovided lengthy supportive therapy" but  
2 determined that he did "not meet criteria for 5150 hold" or  
3 "psychiatric inpatient admission" (AR 476) and discharged him  
4 after a few hours (compare AR 473 (timestamp indicating admission  
5 at 3 p.m.), with 476 (timestamp indicating discharge at 6:59  
6 p.m.)). Plaintiff refused intake for specialized mental-health  
7 treatment with the VA because the VA wouldn't give him his  
8 preferred ADD medication (see AR 473 (noting that he refused  
9 intake in 2012 for same reason));<sup>34</sup> see also AR 477 (stating that  
10 Plaintiff "will just use his tricare")). He was never  
11 hospitalized for psychiatric care. (See 477, 538.)<sup>35</sup> Cf. Judge  
12 v. Astrue, No. CV 09-4743-PJW., 2010 WL 3245813, at \*4 (C.D. Cal.  
13 Aug. 16, 2010) ("[The claimant's] failure to get treatment . . .  
14 seems more a function of the fact that she did not need it, as  
15 opposed to her inability to comprehend that she needed it.").

16 As for Plaintiff's physical impairments, the ALJ noted that  
17 he reported a "history of treatment including physical therapy,  
18 chiropractic treatment but no surgical intervention." (AR 24.)  
19 Such treatment is properly categorized as conservative. See  
20 Morris v. Colvin, No. CV 13-6236-OP., 2014 WL 2547599, at \*4  
21 (C.D. Cal. June 3, 2014) (finding that physical therapy, use of  
22 TENS unit, chiropractic treatment, and medications including  
23

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24 <sup>34</sup> He apparently "also complained [of the] limited therapy  
25 he could get from VA" (AR 473), but as noted earlier, Plaintiff  
26 provided no evidence that he sought or received therapy at all.

27 <sup>35</sup> Plaintiff asserts that he was "psychiatrically  
28 hospitalized in November 2014." (J. Stip. at 22.) But the AR  
page he cites for that proposition makes no mention of any such  
incident. (See id. (citing AR 370).)

1 Vicodin was conservative); see also Tommasetti, 533 F.3d at 1039-  
2 40 (stating that "favorabl[e]" "response to conservative  
3 treatment undermines [claimant's] reports regarding disabling  
4 nature of his pain"). And as the ALJ flagged at the hearing, no  
5 physical-therapy treatment notes are even in the record. (See AR  
6 39.)

7           c.     *Control of psychiatric symptoms with*  
8                     *medication*

9           Third, as noted by the ALJ, psychiatric "medications ha[d]  
10 been generally successful in controlling [Plaintiff's] symptoms."  
11 (AR 22; see also, e.g., AR 291 (stating that Wellbutrin "was  
12 beneficial"), 295 (stating that Concerta "continue[d] to work  
13 well," trazodone "work[ed] well," and occasional low doses of  
14 Xanax were "better" for his anxiety than daily medication), 303  
15 (noting that Plaintiff had "fair response" to Cymbalta and  
16 sunlight).) "Impairments that can be controlled effectively with  
17 medication are not disabling for the purpose of determining  
18 eligibility for SSI benefits." Warre v. Comm'r of Soc. Sec.  
19 Admin., 439 F.3d 1001, 1006 (9th Cir. 2006); see also Rosalia,  
20 2016 WL 29597, at \*8 (finding that plaintiff's "relative  
21 stability" with "medication for her mental impairments"  
22 "undermined her credibility with regard to her allegations that  
23 her impairments rendered her totally disabled").

24           d.     *Inconsistency with objective medical evidence*

25           Fourth, as the ALJ explained, Plaintiff's allegations were  
26 generally inconsistent with the objective medical evidence. (See  
27 AR 22, 23, 26.) Plaintiff's argument that the VA doctors "rated  
28 him 100% disabled" and implicitly put "restrictions" on him (J.

1 Stip. at 17) is not compelling. As explained earlier, the ALJ  
2 properly discounted the VA records<sup>36</sup> and noted that none of the  
3 "recent records document[ed] a disabling musculoskeletal  
4 impairment" (AR 24). In his request for reconsideration,  
5 Plaintiff noted that he had "limited ability to conduct basic  
6 daily activities due to neck and spine pain and limited use of  
7 right hand" (AR 227), but the contemporaneous x-rays and MRI  
8 revealed almost entirely normal results (see AR 553-56). And  
9 treatment notes from his physicians confirmed that medication was  
10 effective in controlling his symptoms (see, e.g., AR 291, 295)  
11 and that he was "generally functioning satisfactorily, with  
12 normal routine behavior, self-care and conversation" (AR 366).  
13 Because treatment notes and test results contradict Plaintiff's  
14 subjective pain testimony, they're a "sufficient basis" for  
15 rejecting it. Carmickle, 533 F.3d at 1161; see also Morgan, 169  
16 F.3d at 600 (upholding "conflict between [plaintiff's] testimony  
17 of subjective complaints and the objective medical evidence in  
18 the record" as "specific and substantial" reason undermining  
19 credibility).

20 Furthermore, the ALJ gave "great weight" (AR 25) to the  
21

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22 <sup>36</sup> Moreover, the 100 percent disability rating by the VA was  
23 based 70 percent on PTSD "with alcohol abuse." (AR 153.) The  
24 ALJ also found that "alcohol abuse" was a severe impairment (AR  
25 19), a finding neither party has challenged. Even if the ALJ had  
26 erred in finding Plaintiff not disabled, he would still not be  
27 entitled to benefits: he would first have to show that alcoholism  
28 was not a contributing factor material to any disability  
determination. See 42 U.S.C. § 423(d)(2)(C); see also 20 C.F.R.  
§ 404.1535(b)(1) ("The key factor we will examine in determining  
whether drug addiction or alcoholism is a contributing factor  
material to the determination of disability is whether we would  
still find you disabled if you stopped using drugs or alcohol.").

1 state-agency reviewing doctors, who assessed light RFCs (see,  
2 e.g., AR 57) and noted that "[t]here [was] no evidence of a  
3 consecutive 12 month period during which [Plaintiff] would have  
4 required a more restrictive [than medium] RFC" (AR 54), a  
5 determination that Plaintiff does not challenge (see generally J.  
6 Stip.). And although Plaintiff claims that the ALJ failed to  
7 explain how he could work with his "insomnia," "limited  
8 mobility," and inability "to stand or walk for long periods" (J.  
9 Stip. at 15), the ALJ recounted his many benign diagnostic tests  
10 (see, e.g., AR at 23-24 (citing chiropractic-examination  
11 results), 24-25 (listing findings from examining orthopedist))  
12 and properly took notice that treating doctors and the examining  
13 orthopedist found that Plaintiff's physical impairments would not  
14 preclude working (see AR 22, 24, 25).

15 Although Plaintiff is correct that the ALJ neglected to  
16 mention his allegation of Crohn's disease (see J. Stip. at 15 n.4  
17 & 23), he does not challenge the ALJ's decision to not include  
18 Crohn's as a "severe" impairment at step two, and many doctors  
19 noted that any diagnosis of Crohn's disease was not documented  
20 (see, e.g., AR 345, 451) and that he had never received treatment  
21 for it (see, e.g., AR 279, 341, 343, 580, 615). For these  
22 reasons, the ALJ was justified in not discussing it, cf. Howard  
23 ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003)  
24 ("[T]he ALJ does not need to 'discuss every piece of evidence.'"  
25 (quoting Black v. Apfel, 143 F.3d 383, 386 (8th Cir. 1998))), and  
26 any error was harmless.

27 The four reasons the ALJ gave for discounting Plaintiff's  
28 subjective symptom statements were girded by her implicit finding

1 that Plaintiff was dishonest when he attempted to explain his  
2 nonappearance at the hearing. (See AR 16-17.) By finding no  
3 "good cause" for his failure to attend, the ALJ implicitly  
4 determined that Plaintiff's story of showing up for the hearing  
5 but not being allowed in was untrue, which she supported by  
6 noting that he never signed in "as per office policy" and no  
7 attempt was made to alert her that he had arrived, which was also  
8 contrary to office policy. (Id.) An ALJ may use "ordinary  
9 techniques" when determining whether to accept a plaintiff's  
10 subjective symptom statements, including consideration of the  
11 plaintiff's reputation for truthfulness and inconsistencies with  
12 the record. See Rounds, 807 F.3d at 1006; Thomas, 278 F.3d at  
13 958-59.

14 Thus, the ALJ provided clear and convincing reasons to  
15 discount Plaintiff's subjective symptom statements, and remand is  
16 not warranted.

1 **VI. CONCLUSION**

2 Consistent with the foregoing and under sentence four of 42  
3 U.S.C. § 405(g),<sup>37</sup> IT IS ORDERED that judgment be entered  
4 AFFIRMING the Commissioner's decision, DENYING Plaintiff's  
5 request for payment of benefits or remand, and DISMISSING this  
6 action with prejudice.

7  
8 DATED: June 28, 2019

  
9 JEAN ROSENBLUTH  
U.S. MAGISTRATE JUDGE

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26 <sup>37</sup> That sentence provides: "The [district] court shall have  
27 power to enter, upon the pleadings and transcript of the record,  
28 a judgment affirming, modifying, or reversing the decision of the  
Commissioner of Social Security, with or without remanding the  
cause for a rehearing."